

Application No. 09/316,651
Amdt. dated July 31, 2003
Reply to Office Action of May 19, 2003

REMARKS

Claims 225-288 and 308-329 are allowed. Claims 299, 301, and 302 are rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,137,095 to Kashimoto et al. (Kashimoto). Claims 289, 292-294, 296 and 305 are rejected under 35 U.S.C. § 103(a) over Kashimoto. Claims 290, 291, and 303 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kashimoto in view of U.S. Patent No. 5,044,914 to Schulling et al. (Schulling) and U.S. Patent No. 4,237,731 to Dehn et al. (Dehn).

Applicants believe there are numerous problems with the Examiner's rejections of the claims rejected out of claims 289-307. For example, the Examiner states that elements 69, 72, and 73 of Kashimoto are "sensing devices." It is respectfully pointed out that elements 69, 72, and 73 of Kashimoto are a refrigerator, a microwave oven, and a hot food storage cabinet respectively, not "sensing devices" as the Examiner alleges. Elements 69, 72, and 73 are graphically described as being outputs of the Kashimoto system (see the arrows into boxes 69, 72, and 73 of Fig. 6, Kashimoto) not inputs as in a sensor. If the Examiner is purporting to argue that elements 69, 72, and 73 include sensing devices, he is respectfully requested to point out where in Kashimoto there is support for such an argument. It is noted that according to the disclosure of Kashimoto, refrigerator 69 is part of the Kashimoto system only in the context that food may be taken out of refrigerator 69 when it is to be cooked (Kashimoto, column 19, lines 20-25). Regarding the statement that Kashimoto teaches encryption of data, it is respectfully pointed out that Kashimoto at column 20, lines 5-10 suggests encryption of *password* data, not encryption of a sensor generated data stream as the applicants' claims recite.

According to MPEP § 2131, "to anticipate a claim, the reference must teach every element of the claim." A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Application No. 09/316,651
Amdt. dated July 31, 2003
Reply to Office Action of May 19, 2003

For at least the foregoing reasons stated, it is clear that the Examiner's claim rejections under 35 U.S.C. § 102(e) are deficient in numerous respects.

As just one further example as to the deficiencies of the Examiner's rejections (without conceding that any of the Examiner's rejections based on Kashimoto are correct), the Examiner's explanation for why he considers claims 290, 291, and 303 obvious is noted.

According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Examiner makes no attempt whatsoever to show that the skilled artisan would be motivated to modify Kashimoto in accordance with the teaching of Schulling and Dehn. The Examiner merely states that Kashimoto is combinable with the cited references without stating any underlying reasons in support of the combination. It is noted that Kashimoto does not suggest any kind of portable sensing device whatsoever.

In spite of the numerous deficiencies of the outstanding Office Action, applicants are desirous of expediting allowance of the application. Accordingly, applicants cancel claims 289-307 without prejudice or disclaimer. No claim cancellation in the present application will be taken as an admission that the applicants agree with a ground for rejection proposed by the Examiner. Indeed

**Application No. 09/316,651
Amdt. dated July 31, 2003
Reply to Office Action of May 19, 2003**

applicants expressly reserve the right to prosecute claims broader in scope, narrower in scope or similar in scope to claims cancelled in the present application in an application related to the present application (e.g. a continuation).

Accordingly, in view of the above amendments and remarks, applicants believe all of the claims of the present application to be in condition for allowance and respectfully request reconsideration and passage to allowance of the application

If the Examiner believes that contact with applicants' attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call applicants' attorney at the phone number noted below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to deposit Account No. 50-0289.

Respectfully submitted,
WALL MARJAMA & BILINSKI LLP

By: 
George S. Blasiak

Reg. No. 37,283

GSB:ts:jrc
101 South Salina Street, Suite 400
Syracuse, NY 13202
Telephone: (315) 425-9000
Facsimile: (315) 425-9114
Customer No.: 20874